A

CASHFLOW HORIZON SDN BHD

v.

SUBRAMANIAM PAIDATHALLY & ANOR

B

HIGH COURT MALAYA, KUALA LUMPUR
ANANTHAM KASINATHER JC
[SUIT NO: 4-22-799-2007]
30 OCTOBER 2009

C ***CONTRACT:*** *Agreement between principal and tax agent - Breach - Claim for monthly retainer as a tax agent - Failure by agent to discharge agreed duties - Total failure of consideration - Failure to submit tax returns - Failure to finalize accounts - Claim for monthly retainer disallowed*

D ***PROFESSIONS:*** *Tax Agents - Claim for professional services as a tax agent - Monthly retainer - Whether agent had discharged agreed duties - Whether there was total failure of consideration - Failure to submit tax returns - Failure to finalize accounts - Claim for monthly retainer disallowed*

E

TORT: *Damages - Deceit - Principles for awarding damages for deceit - Exemplary damages - Indemnity - Restitution*

TORT: *Deceit - Fraudulent misrepresentation - Liability - Tax agent* F *making fraudulent representation to client regarding estimated amount of tax due - Client induced by fraudulent misrepresentations into parting with monies for payment for taxes - Payments misappropriated by tax agent - Whether fraudulent misrepresentation established - Principles for awarding damages for deceit*

G

The plaintiff was a company dealing in the sale of skin and body care products under the brand name of O-Lynn. The plaintiff's accounts were not in order and the plaintiff had never paid taxes since it was incorporated in 1994. Therefore, its directors, PW4 and PW5 appointed the defendants who were qualified public H accountants operating in the name and style of Sylvester Groves & Company (SGC) as the plaintiff's external accountants and tax agents. It was agreed that a monthly retainer of RM10,000 was to be paid to the defendants. Payment for any additional work was subject to agreement by the plaintiff. The 1st defendant then I requested that the plaintiff pay the sum of RM250,000 towards account of the taxes payable so that IRD will not disturb the

plaintiff. According to PW4, the 1st defendant represented to him and PW5 that the maximum amount payable by the plaintiff for tax for the years 1997 to 2001 would not exceed RM660,000 and that he would personally be responsible to pay any excess. This oral guarantee was confirmed in writing by SGC. The plaintiff thus forwarded cheques to the value of RM250,000 to SGC. The 1st defendant represented to PW4 and PW5 that he had forwarded the RM250,000 to IRD. It was later found that the RM250,000 was not paid to the IRD resulting in the IRD raiding the plaintiff's office and the residence of PW4 and PW5. This caused PW5, who was the product ambassador of the O-Lynn product, to go into depression. PW5 felt humiliated and embarrassed by the raid and by being followed to the school of her child by some of the raiding officers. The plaintiff had since engaged a new accountant (PW6) to resolve their accounting and tax matters. The defendant's case was that the RM250,000 was forwarded to the IRD, only for it to be returned, without any explanation. The plaintiff claimed for the losses incurred and the defendants counter-claimed for their outstanding fees.

Held (allowing plaintiff's claim; disallowing defendants' counter claim):

(1) The 1st defendant made the said representations regarding the estimated amount of tax due but there was no evidence to suggest that they had negotiated with IRD. The 1st defendant's evidence on the alleged forwarding of the cheques to the IRD and the alleged return of the same by the IRD was so incredible and therefore rejected. The 1st defendant was found to be a totally unreliable witness. The representations made by the defendants were fraudulent misrepresentations. The plaintiff was induced by such fraudulent misrepresentations into parting with the RM250,000. The defendants had appropriated the RM250,000 from the outset. (para 7)

(2) The monthly retainer included work to be undertaken by the defendants for dealing with the IRD on the tax payable by the plaintiff. The defendants had not discharged this duty at all. There was a total failure of consideration in respect of this part of the work undertaken by the defendants. The work concerning the finalization of the accounts of the plaintiff for the years 1996-2001 was no better. Despite being aware that the plaintiff's accounting records were not in a satisfactory

state, the defendants continued to collect their monthly retainer and held themselves out to be capable of finalizing the accounts. The counter-claim was therefore disallowed. (para 8)

(3) The defendants were liable to refund the sum of RM250,000 to the plaintiff with interest. The defendants also had to indemnify the plaintiff for all penalties that may be imposed upon the plaintiff by the IRD, for late payment of tax arising from the plaintiff's failure to file its tax returns in a timely manner for the years 1996 to 2006, due to the deceit practised by the defendants on the plaintiff. (paras 9 & 10)

(4) The defendants also had to pay exemplary damages of RM500,000 to the plaintiff. The 1st defendant's conduct when examined from the year 2002 till his appearance in court revealed no remorse on his part. On the contrary, he continued to maintain in his witness statement and his oral evidence that the defendants had done no wrong. (paras 11 & 12)

(5) When awarding damages involving deceit, the defendant is bound to make reparation for all the actual damages directly flowing from the fraudulent inducement. The court may order the defendant to pay any extra expenses incurred by the plaintiff and it does not lie in the mouth of the fraudulent person to say that they could not reasonably have foreseen the likelihood of such expenses being incurred by reason of the fraud perpetrated by it. The defendants had to pay the plaintiff the sum of RM187,550 which the plaintiff had to pay PW6 to complete the same job which the defendants were contracted to perform but did not perform. This expenditure directly resulted from the defendants' failure to finalize the plaintiff's accounts and tax matters. (para 14)

For the plaintiffs - Renu Zechariah (Ragumaran with him); M/s G Ragunathan & Co

For the defendants - PL Cheah; M/s Thomas Philip

Reported by Amutha Suppayah

JUDGMENT

Anantham Kasinather JC:

Background Facts

[1] The plaintiff is a private limited company dealing in the sale of skin and body care products under the brand name of O-Lynn. The plaintiff was apparently successful in the marketing of this brand of product. The problem confronting the plaintiff was, its accounts were not in order. Fearful that its accounting lapses, would catch up with it, sooner rather than later, the directors of the plaintiff namely Mohd Asri Rafael Ancheta (PW4) and Noor Azlin binti Dato Hj Kamaruzaman (PW5) resolved to appoint an accountant to handle the accounting needs of the plaintiff. Central to the issue of accounts of the plaintiff, was that the company had never paid tax since it was incorporated in 1994. Sometime in late 2001, PW4 and PW5 were introduced to the 1st defendant. The 1st and 2nd defendants are qualified public accountants and operate as a partnership in the name and style of Sylvester Groves & Company (SGC). The plaintiff duly appointed SGC as its external accountants and tax agents. It is not in dispute that the terms and conditions of SGC's appointment is evidenced by several letters issued by SGC on diverse dates in September 2001 and 2002. The appointment letters appear from pp. 1 to 19 of exh. B1 and their appointment as tax agent on p. 20 of B1.

[2] The first letter of appointment appearing on pp. 1 to 3 of exh. B1 provided for a lump sum payment of some RM125,000 to SGC, in consideration of SGC *inter alia* preparing the accounts of the plaintiff company for the years 1996 to 2000 including, attending to its tax matters and 'providing projections for 2001 and into the future' in the form of business plans and/or budget. The agreement for fees to be in the form of lump sum payment was quickly replaced by mention of charges on hourly basis, only for this basis, in turn, to be replaced by mention of fees based on 'time spent in dealing with your affairs' (See p. 13 of B1). The next instruction letter from SGC of 9 January 2002, however, records the plaintiff's unhappiness with the hourly rate and notes their preference to pay on a retainer basis. This offer to pay by way of monthly retainer was readily accepted by SGC subject to the defendant being entitled to charge by way of a fee to be agreed in advance for any additional work. (See para. 3 at pp. 16 and 17 of B1).

[3] The monthly retainer was agreed initially at RM15,000 as evidenced by SGC's first payment request at p. 22 of B1. The monthly retainer was reduced to RM10,000 a month from July 2003 (See p. 38 of B1). This is contrary to the payment request for RM10,000 commencing March 2002 (See p. 29 of B1). The more critical document in the chronology of events is the letter from SGC to the plaintiff on 22 March 2002 at p. 40 of B1. In this letter SGC informed the plaintiff that they estimated the amount of tax payable by the plaintiff to be in the region of RM600,000 to RM650,000 and that the plaintiff should be in readiness to pay RM20,000 per month towards account of such tax to Inland Revenue Department (IRD). Thereafter, the 1st defendant orally requested that the plaintiff pay the sum of RM250,000 towards account of the taxes payable so that IRD will not disturb the plaintiff. This oral communication was subsequently confirmed in writing by SGC in a fax dated 8 October 2002 (p. 1 of C1). According to PW4, the 1st defendant represented to him and PW5 that the maximum amount payable by the plaintiff for tax for the years 1997 to 2001 would not exceed RM660,000 and that he would personally be responsible to pay any excess. This oral guarantee was confirmed in writing by SGC in an undated letter at p. 3 of C1. The plaintiff forwarded cheques to the value of RM250,000 on diverse dates in the year 2002 with the last payment by way of cheque issued on 16 December 2002 (see pp. 42-46 of B1). Thereafter, the 1st defendant represented to PW4 and PW5 that he had forwarded the RM250,000 to IRD, and several months later forwarded to them four letters bearing the acknowledgement of IRD purportedly to satisfy them that their monies had, indeed, been paid over to the IRD. (See pp. 7 to 10 of C1).

[4] It is not in dispute that the RM250,000 was not credited into the account of IRD. This non-payment resulted in the IRD raiding both the office of the plaintiff and the residence of its directors, PW4 and PW5 and removing a considerable volume of documents. The raid, conducted on 6 February 2007 by the IRD, resulted in PW5 lodging a police report over this matter (p. 19 of C1). PW5 who was the product ambassador of the O-Lynn product was at the time of the raid, at home, and witnessed the raid. This caused her to go into a depression. PW5 thereafter felt humiliated and embarrassed by the raid and by being followed to the school of her child by some of the raiding officers. The plaintiff has since engaged a new accountant by the name of Salihin bin Abang (PW6) to resolve their accounting and tax

matters. The defendant's case is that the RM250,000 was forwarded to the IRD, only for it to be returned, without any explanation. (See WSDW 1-answers to Q15 to 18).

[5] Cause Of Action

a. The 1st defendant fraudulently misrepresented to the plaintiff that it had to pay a sum of RM250,000 to the IRD, to enable the 1st defendant to initiate the resolution of the plaintiff's tax liabilities to IRD. This oral fraudulent misrepresentation was subsequently incorporated in the defendant's letter of 8 October 2002. (See WSPW 4, answers of PW4 to Q26, 28 and p. 1 of C1);

b. Upon receipt of the aforesaid sum of RM250,000 from the plaintiff, the defendants fraudulently misrepresented to the plaintiff that it had forwarded the said sum of RM250,000 to IRD, when it had not done so;

c. The defendants forwarded to the plaintiff four documents in the form of exhs. 7 to 10 of C1 purportedly containing an acknowledgement of cheques amounting to RM250,000 issued by the defendants to the IRD. The defendants fraudulently misrepresented to the plaintiffs that the IRD chop on the four letters were genuine when they were, in fact, fake;

d. The defendants fraudulently misrepresented to the plaintiff since receipt of the plaintiff's cheques for RM250,000 that the monies had been remitted to the IRD and they had nothing to worry (WSPW4 - answer to Q32). The defendants maintained this to be the position even after the raid (WSPW4 answer to Q41);

e. Contrary to the aforesaid representations of the defendants, the defendants appropriated the sum of RM250,000 for their own use and claimed to be entitled to set off this amount against monies alleged to be due to it by way of outstanding fees, when the plaintiff demanded the refund of the monies (See WSPW4 - answer to Q65);

f. The fraudulent misrepresentations of the 1st defendant and the appropriation by the defendants of the said sum of RM250,000 directly resulted in the raid (See WSPW4 - answer to Q39) and the ensuing losses suffered by the plaintiff in the form of having to employ PW6 as its new accountant,

paying fees for a second time around to undertake work similar in nature to that for which the defendants had been paid fees by way of retainer and being exposed to penalties for the late payment of tax; and

g. That in all the circumstances of the case, there be judgment for the plaintiff for the amount of RM250,000, the repayment of the sum of RM215,000, the sum of RM187,000 paid to the new accountants, and indemnity for the penalty that may become payable to the IRD for late submission of tax returns and exemplary/aggravated damages.

Counter-Claim

[6] The defendants, in turn, subsequent to the raid, issued some 14 invoices to the plaintiff seeking to recover outstanding fees, after taking into account part-payments made by the plaintiff. These invoices form the subject matter of the defendants' claim in Kuala Lumpur High Court Civil Suit No. S4-22-1072-2007 and the counter-claim in this suit. By an order of court of 10 December 2007, the S4 suit was consolidated with this suit and the defendants' claim in the S4 suit ordered to be disposed by way of the counter-claim in this suit.

[7] Findings Of Court

a. The oral and documentary evidence before the court establishes beyond doubt that the 1st defendant made the representations set out earlier in this judgment under the caption of "cause of action'. This is borne out by exhs. WSPW4 and WSPW5 and the letters at pp. 1 to 3 of C1 and 7 to 10 of C1. The question before this court, is whether the representations are fraudulent misrepresentations? The defendants did not produce an iota of evidence to suggest that they were in negotiations with IRD before the defendants letter of 8 October 2002, apart from the 1st defendant's claim to have spoken to one Cik Akrina. The defendants made no effort to lead evidence as regards the present whereabouts of the said Cik Akrina although this should not have been difficult bearing in mind that the events in question took place only some seven years ago and that the tracing of a civil servant in the employ of the IRD whether as a current or former civil servant is not impossible. Secondly, the 1st defendant did not produce an iota of evidence to establish the genuineness of the IRD chops by calling as a

witness its dispatch boy or produce the Defendants cheques that were purportedly returned by IRD. Thirdly, it is not beyond reason to expect the defendants to produce their cheque butts or the letter from the IRD returning the cheques (See answers to Q18 of WSDW1) to substantiate their claim that the cheques were forwarded and returned by the IRD. Fourthly, it is logical for this court to expect the defendants to have notified the plaintiff as soon as the IRD returned the cheques, if true, and there is no evidence of this. On the contrary, the evidence of PW4 and PW5 is that the 1st defendant, throughout the material period and even after the raid maintained that the defendants had paid the IRD (See answer to Q33 in WSPW4). Finally, it does not stand to reason for the IRD to return cheques from tax payers without an accompanying letter, particularly when the payment is alleged to have been made by tax agents who can be expected to enjoy a working relationship with the tax department. In my judgment, the 1st defendant's evidence of the circumstances surrounding the alleged forwarding of the cheques to the IRD and the alleged return of the same by the IRD is so incredible, that this court has no hesitation in rejecting it and holding the 1st defendant to be a totally unreliable witness. For this same reason, I hold the representations made by the defendants to be fraudulent misrepresentations;

b. On the other hand, there is overwhelming evidence that the plaintiff was induced by both the oral and written representations of the 1st defendant into paying the sum of RM250,000 to the defendants for payment to IRD. (See WSPW4 - answers to Q24 to 29). In this respect, it should be borne in mind that unlike the 1st defendant who is a professionally qualified accountant, PW4 and PW5 are ordinary business persons with little or no knowledge of accounting and tax matters. Indeed, it is for this very reason that they had approached and subsequently employed the defendants, at great cost to the plaintiff, as their external accountants and tax agents. I hold, that, in all circumstances of this case, the 1st defendant did make the fraudulent misrepresentations as set out earlier in this judgment under the caption of "cause of action" and the plaintiff was induced by such fraudulent misrepresentations into parting with the sum of RM250,000, intending the same as payment of the taxes due from it to the IRD;

c. As regards the allegation of the appropriation of the RM250,000 by the defendants, the defendants' pleaded case and evidence on oath of the 1st defendant is that PW4 and PW5 agreed to the defendants setting off the RM250,000 against outstanding fees due to the defendants. (See para. 11 of statement of defence and the answer to Q21 of WSDW1). The 1st defendant's claim is that this agreement was reached in 2004. According to the 1st defendant, he kept minutes of this meeting but over-looked including the minutes in the bundle of documents before this court. Naturally, counsel for the plaintiff objected to the production of these minutes since it has been the pleaded case of the plaintiff since 2007 that the plaintiff had no knowledge that the defendants had not paid the RM250,000 to the IRD until so informed by the IRD after the raid conducted by the IRD of their premises. Additionally, I disallowed the introduction of the minutes because there are no contemporaneous documents to substantiate the 1st defendant's claim that the plaintiffs had consented to the set off. Besides, it must be borne in mind that the parties did meet after the raid and from the answer to Q41 of WSPW 4, it is evident that the 1st defendant was not forthcoming about whether the defendants had paid over the RM250,000 to the IRD, even at this point of time. Additionally, the contents of the defendants letter of 21 February 2007. (See p. 11 of C1) contradicts the 1st defendant's claim that the plaintiff had consented to the set off. I opine to this effect because although this letter was written subsequent to the raid, the defendants make no mention of the set off in their letter, instead the defendants in this letter request a letter from the plaintiff appointing them as their tax agent when they had been appointed the tax agent of the plaintiff, as early as 4 March 2002. In my judgment, the contents of the defendants letter of 21 February 2007 amounts to nothing more than the defendants endeavoring to induce the plaintiff to part with more of its monies without any promise that they would be able to solve the plaintiff's tax woes. I am fortified in coming to this conclusion by the evidence of 1st defendant that he could not finalize the accounts of the plaintiff even as late as 2007 because the accounting documents of the plaintiff were not sufficient to enable the defendants to arrive at an "opening balance". In the absence of the opening balance, according to the 1st defendant the accounts of the plaintiff can never be

finalized. This evidence of the 1st defendant, in my judgment, exposes his intention to deceive the plaintiff since if that were the case, why was he still writing to the plaintiff in Feb 2007 encouraging them to continue with his services and requesting for a new letter of appointment as a tax agent? Surely, if the 1st defendant was unable to derive the opening balance since his appointment in November 2001, there is no likelihood of him being able to do so in 2007. Accordingly, it is also my finding that the defendants not only did not forward the RM250,000 to the IRD but appropriated the same from the outset. For these reasons, I reject the evidence of the 1st defendant that the plaintiff agreed to set off the RM250,000 against the fees purportedly due to the defendants.

Counter-Claim

[8] The defendants are a firm of professional accountants. Their entitlement for fees under the agreement was a monthly retainer of RM10,000 after July 2003. Their entitlement to payment for any additional work was subject to it reaching prior agreement with the plaintiff (See pp. 16 & 17 of B1). There is no evidence that the defendants reached any such agreement with the plaintiff. The monthly retainer included work to be undertaken by the defendants for dealing with the IRD on the tax payable by the plaintiff. There is no evidence that the defendants discharged this duty, at all. Accordingly, there can be said to be a total failure of consideration in respect of this part of the work undertaken by the defendants. The work concerning the finalization of the accounts of the plaintiff for the years 1996-2001 can be said to be no better. The explanation of DW1 for not being able to finalize the accounts is that he was unable to derive "the opening balance". DW1 claimed that the poor state of the accounts maintained by the plaintiff was the cause for his inability to derive "the opening balance". I reject this explanation as even in the defendants letter of 21 February 2007, the defendants were still offering their services in exchange for further fees from the plaintiff. In my judgment, if the defendants were unable to finalize the accounts for whatever reason, they should have made known the difficulty to the plaintiff within a reasonable time of their appointment so as to enable the plaintiff to employ other persons to meet the statutory requirements for the filing of accounts and tax returns. On the contrary, the defendants letter of 9 January 2002 demonstrates that the defendants were aware that the plaintiff's accounting records were not in a satisfactory state as early as

9 January 2002. Yet, they continued to collect their monthly retainer and held themselves out to be capable of finalizing the accounts. Against this background, it sounds ill in the mouth of the 1st defendant to now claim that he was unable to finalize the accounts because the plaintiff's accounting records were inadequate. In my judgment, the timing of the issuance of the 14 invoices by the defendants, at a time after the plaintiff had commenced proceedings to recover the RM250,000 from it, persuades me to believe that the 14 invoices are an after-thought and not genuine. Accordingly, I disallow the counter-claim.

Relief Granted

Prayers (a) and (b)

[9] Prayers (a) and (b) are for the refund of the sum of RM250,000. I hold the defendants liable to refund the sum of RM250,000 to the plaintiff following my finding that the defendants appropriated the RM250,000, from the outset. I order the defendants to pay interest on this sum at 8% per annum from 20 December 2002 till payment. I am ordering interest from 20 December 2002 since the last cheque for the RM250,000 paid by the Plaintiff, should have been cleared by the Defendants on or about that date. (See WSPW 4-answer to Q 32).

Prayer (c)

[10] I order the defendants to indemnify the plaintiff for all penalties that may be imposed upon the plaintiff by the IRD, for late payment of tax for the years 1996 to 2006, arising from the plaintiff's failure to file its tax returns in a timely manner for the years 1996 to 2006, due to the deceit practised by the defendants on the plaintiff. Such penalties when imposed by the IRD on the plaintiff, to be paid by the defendants within 14 days of the service on either of them at their usual business address of the said penalty notices. I make this order because it is my finding that the defendants despite being remunerated by the plaintiff by way of a monthly retainer and other payments, failed to finalize the accounts of the plaintiff and ensure the prompt filing of the tax returns of the plaintiff. In my judgment, the plaintiff's liability to pay these penalties would not have arisen but for the deceit of the defendants.

Prayer (d)

[11] I order the defendants to pay exemplary damages of RM500,000 to the plaintiff. My grounds for this order are as follows:

i) First, the defendants with full knowledge that PW4 and PW5 have no knowledge of accounting and tax matters, mislead them into believing that the plaintiff's accounting and tax matters were being properly managed when, in fact, for a period of six years, the defendants did absolutely nothing;

ii) Secondly, the defendants after appropriating the RM250,000 for their own use intentionally mislead the plaintiff into believing that their tax matters had been resolved by fraudulently misrepresenting that the RM250,000 had already been forwarded to the IRD. The defendants refused to tell the truth even after the raid by the IRD of the plaintiff's business premises and the residence of PW4 and PW5;

iii) Thirdly, the defendants went to the extent of faking the stamps of IRD to mislead the plaintiff into thinking that they had resolved the plaintiff's tax matters and this deception carried on for some five years before the plaintiff realized that they were the victims of the defendants' deception from the IRD;

iv) Fourthly, I accept the evidence of PW5 that she was deeply humiliated by the raid and was traumatized for some period of time after the raid, and

v) Fifthly, the defendants have shown no remorse for the deceit perpetrated on the plaintiff as evidenced by the defendants letter of 21 February 2007 wherein the defendants continued to offer their services to resolve the plaintiff's tax issues and hinted of the plaintiff being exposed to more investigations, from more government departments if the defendants were not appointed to resolve the plaintiff's accounting and tax matters. For example, part of this defendants letter of 21 February 2007 reads: "This preliminary enquiry by the tax department indicates to us that your business and tax affairs are to be the subject of close scrutiny by the authorities and for us to act in your best interests we need you to sign this letter of instruction. You should be aware that investigations by one agency of the government often lead to further enquiries from other agencies".

[12] In arriving at the sum of RM500,000, I was also persuaded by the passage in McGregor on *Damages*, 15th edn, at para 429 that the court in assessing exemplary damages would consider the conduct of the defendants right down to the time of judgment. The 1st defendant's conduct when examined from the year 2002 till his appearance in court reveals no remorse on his part. On the contrary, he continued to maintain in his witness statement and his oral evidence that the defendants had done no wrong. I order interest at 8% per annum on the sum of RM500,000 from the date of judgment.

Prayer (h)

[13] The plaintiff has prayed for a refund of part of the monies paid to the defendants by way of monthly retainer and disbursements primarily due to a total failure of consideration. Although I am satisfied that there was a total failure of consideration on the part of the defendants in attending to the accounting and tax matters of the plaintiff, I am not prepared to order the defendants to return all of the monies that were paid by the plaintiff to the defendants since it is apparent from the evidence before the court that the plaintiff had engaged the services of the defendants to undertake services over and above finalizing the accounts of the plaintiff and its tax matters.

[14] It is settled law that a court of law when awarding damages involving deceit, the defendant is bound to make reparation for all the actual damages directly flowing from the fraudulent inducement. In other words, the court is entitled to order the defendant to pay any extra expenses incurred by the plaintiff and it does not lie in the mouth of the fraudulent person to say that they could not reasonably have foreseen the likelihood of such expenses being incurred by reason of the fraud perpetrated by it. Hence, the fact that the defendants may not have foreseen the likelihood of plaintiff having to employ new accountants to finalise the accounts and tax matters, will not preclude this court from taking this fact into account in determining the nature of the relief to be accorded to the plaintiff. Accordingly, under "such other relief or order as deemed fit by this Honourable court", I order the defendants to pay to the plaintiff the sum of RM187,550 which the plaintiff have had to pay the new accountant (PW6) to undertake and complete the very same job which the defendants were contracted to perform but did not perform for the plaintiff. I make this order because I am satisfied that this expenditure is the direct result of the defendants' failure to finalize the accounts of

the plaintiff and its tax matters, notwithstanding having been remunerated by the plaintiff. In making this order, I order interest of 8% per annum to be paid on the sum of RM187,550 from the date of judgment till the date of payment.

Costs

[15] I order the defendants to pay the plaintiff costs of RM100,000 arising from the plaintiff's claim being allowed and the defendants counter-claim being disallowed. In arriving at the figure of RM100,000, the court took into account the following matters:

a) That the cost ordered to be paid are in respect of two independent claims ie, the plaintiff's claim and the defendants' counter-claim;

b) The defendants were uncooperative in the inclusion of documents in the agreed bundle thereby compelling the plaintiff to subpoena officers from the IRD;

c) The bundle of documents exceeded ten volumes;

d) Both counsel produced fairly substantial written submissions and in the case of counsel for the plaintiff, an opening address and a summary of the case;

e) Bundle of authorities; and

f) The cost of RM100,000 is inclusive of disbursements incurred by the plaintiff by way of subsistence allowance to several witnesses.